IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 132 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMKRISHNA J. THAKKAR

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 132 of 1992
SERVED BY RPAD - (N) for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 22/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following questions have been referred for our opinion in respect of assessment year 1982-83 :-

"(1) Whether in law and on facts, the Appellate Tribunal was justified in rejecting the assessee's claim for exemption of capital gains arising on sale of residential property on the ground that the exemption u/s.54(1) of the I.T. Act, 1961 was not admissible in the case of HUF ?

(2) Whether in law, the Appellate Tribunal was right in its interpretation of the word "assessee" used in section 54(1) of the I.T. Act, 1961 as applicable to individuals only and not to HUFs ?"

2. Although served by RPAD, none appears for the applicant-assessee when the reference is called out for hearing nor is any paper book filed although the reference was made at the instance of the assessee as far back as in the year 1992.

3. Of course, Mr MR Bhatt, learned standing counsel for the revenue submits that the controversy raised in this reference is already concluded against the assessee by a decision of this Court in Ravindra Gunvantlal Shah vs. Commissioner of Income, (1994) 208 ITR 995. We, however, decline to answer the question for want of prosecution of the reference by the assessee.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-